

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**May 6, 2004**

<b>IN RE:</b>	)	
	)	<b>DOCKET NO.</b>
<b>GENERIC DOCKET ADDRESSING</b>	)	<b>00-00523</b>
<b>RURAL UNIVERSAL SERVICE</b>	)	

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**ORDER GRANTING IN PART THE *PETITION FOR EMERGENCY  
RELIEF AND REQUEST FOR STANDSTILL ORDER BY THE  
TENNESSEE RURAL INDEPENDENT COALITION***

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This docket came before the Hearing Officer for consideration of the comments filed pursuant to the *Order on February 17, 2004 Telephonic Status Conference* on February 27, 2004 by the Rural Independent Coalition<sup>1</sup> ("Coalition"), BellSouth Telecommunications, Inc. ("BellSouth"), the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), and the Commercial Mobile Radio Service ("CMRS") Carriers<sup>2</sup> and on March 8, 2004 by the Coalition and BellSouth.

This order will begin with a discussion of the relevant procedural history followed by a recitation of the outstanding issues, positions of the parties, and the findings and conclusions.

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<sup>1</sup> The Coalition is comprised of the following companies: Ardmore Telephone Company, Inc., Ben Lomand Rural Telephone Cooperative, Inc.; Beldsoe Telephone Cooperative; CenturyTel of Adamsville, Inc.; CenturyTel of Claiborne, Inc.; CenturyTel of Ooltewah-Collegedale, Inc.; Concord Telephone Exchange, Inc.; Crockett Telephone Company, Inc.; Dekalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.; Humphreys County Telephone Company, Loretto Telephone Company, Inc.; Millington Telephone Company, North Central Telephone Cooperative, Inc.; Peoples Telephone Company; Tellico Telephone Company, Inc.; Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc., and Yorkville Telephone Cooperative.

<sup>2</sup> The CMRS Carriers joining in the filings are Cellco Partnership d/b/a Verizon Wireless, BellSouth Mobility LLC, BellSouth Personal Communications, LLC, and Chattanooga MSA Limited Partnership collectively d/b/a Cingular Wireless; AT&T Wireless PCS, LLC d/b/a AT&T Wireless; PowerTel Kentucky, Inc., PowerTel Memphis, Inc., PowerTel Birmingham, Inc., and PowerTel Atlanta, Inc. collectively d/b/a T-Mobile; and Sprint Spectrum L.P. d/b/a Sprint PCS

The findings and conclusion section will (1) discuss BellSouth's obligation to provide compensation for CMRS traffic that terminates to a Coalition end user and that is originated by a CMRS provider that has entered into a meet-point billing arrangement with BellSouth; (2) evaluate the change in circumstances since the issuance of the *Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction Over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc. and Independent Local Exchange Carriers* ("December 2000 Order"); and (3) set forth a compensation mechanism.

An explanation of five terms used throughout this order will aid the reader's understanding. First, this order uses the term "Toll Settlement Agreements" to refer to the written contracts between BellSouth and the Coalition that were terminated as of December 31, 2000. BellSouth generally refers to these agreements as the "Primary Carrier Plan," and the Authority has referred to these agreements in the past as "Settlement Contracts." Second, this order uses the term "Interconnection Arrangements" to refer to BellSouth's continuing obligation to provide certain compensation to the Coalition after the termination of the Toll Settlement Agreements. The Coalition refers to this obligation in its brief as "Existing Terms and Conditions." Third, the term "CMRS Carriers" is used to refer to the providers of CMRS service that are parties to this docket, and, fourth, the term "CMRS providers" is used to refer to providers of CMRS service generally. Fifth, the use of the term "meet-point billing agreement" is used only to describe agreements between BellSouth and certain CMRS providers. It should not be inferred from use of this term that the Hearing Officer has made a determination as to whether the agreement of the Coalition to the meet-point billing agreements is required.

## I. RELEVANT PROCEDURAL HISTORY

On November 8, 2000, the Hearing Officer<sup>3</sup> issued the *Report and Recommendation of the Pre-Hearing Officer* that included a list of the following legal issues for determination in this docket:

1. Does the TRA have jurisdiction over the toll settlement agreements between BellSouth and the [Coalition]?
2. Should the withdrawal of toll settlement agreements between BellSouth and the [Coalition] be considered in the Rural Universal Service Proceeding? If so, how should they be considered?
3. Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated rural companies, as such companies are defined under state law?<sup>4</sup>

At an Authority Conference held on November 21, 2000, the Directors voted to approve the list of legal issues.<sup>5</sup>

The Hearing Officer addressed the first legal issue on December 29, 2000 in the *December 2000 Order*. In the order, the Hearing Officer concluded that the Authority has jurisdiction over the Toll Settlement Agreements and further found:

Based on the foregoing analysis, the Hearing Officer concludes that the TRA has jurisdiction and authority over the Settlement Contracts between BellSouth and the [Coalition] to the extent that BellSouth must continue the interconnection *arrangement* imposed as a result of past regulatory proceedings, until such time that the current arrangement is otherwise terminated, replaced, or modified by the Authority.

BellSouth may have acted within its contractual rights in unilaterally terminating its existing contract as of December 31, 2000, and the Hearing Officer does not here take issue with the exercise of such rights. Still, BellSouth's power to unilaterally terminate its existing agreements does not, as a matter of law, empower BellSouth to escape its existing regulatory obligation with respect to maintaining interconnection arrangements with the [Coalition], nor does it empower BellSouth to unilaterally dismantle the existing intralata toll

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<sup>3</sup> Former Director Melvin J. Malone served as the Hearing Officer.

<sup>4</sup> *Report and Recommendation of the Pre-Hearing Officer*, Attachment 2 (Nov. 8, 2000).

<sup>5</sup> *See Order Amending and Adopting Report and Recommendation of Pre-Hearing Officer*, 4-5 (Jun. 25, 2001).

arrangement and replace it with an access-based compensation mechanism of its, or any other party's choosing absent TRA involvement.<sup>6</sup>

The Authority affirmed the *December 2000 Order* at an Authority Conference on February 21, 2001.<sup>7</sup>

On June 28, 2002, the Hearing Officer issued the *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* ("June 2002 Order"). In this order, the Hearing Officer concluded that the withdrawal of Toll Settlement Agreements should be considered in this docket and that the state universal service statute applies to rate of return regulated rural companies.<sup>8</sup>

On July 15, 2002, BellSouth filed *BellSouth Telecommunications Inc.'s Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* ("Motion for Reconsideration").<sup>9</sup> On July 23, 2002 a panel of Directors consisting of then Chairman Sara Kyle and Directors Pat Miller and Ron Jones voted to accept the *Motion for Reconsideration* as a petition for appeal and appointed Director Ron Jones as the Hearing Officer.<sup>10</sup>

On August 23, 2002, BellSouth filed a letter requesting that the Authority hold BellSouth's motion in abeyance for sixty (60) days. The Hearing Officer entered an order on

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<sup>6</sup> *Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction Over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc and Independent Local Exchange Carriers*, 12 (Dec. 29, 2000)

<sup>7</sup> *See Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer*, 14 (May 9, 2001)

<sup>8</sup> *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer filed on November 8, 2000*, 8 (Jun. 28, 2002)

<sup>9</sup> BellSouth filed a substitute version of its motion on July 25, 2002

<sup>10</sup> *See Order Accepting Petition for Appeal and Appointing a Hearing Officer*, 3 (Sept 17, 2002)

September 4, 2002 granting BellSouth's request thereby holding the *Motion for Reconsideration* in abeyance until November 4, 2002. In response to later joint requests for extension, the Hearing Officer extended the abeyance period until May 5, 2003.<sup>11</sup>

On April 2, 2003, BellSouth filed a letter stating that it would discontinue making payments to the Coalition after April 2003 for CMRS-originated traffic transiting BellSouth's network.<sup>12</sup> In its letter, BellSouth explains that the use of meet-point billing agreements by BellSouth and CMRS providers has enabled BellSouth to provide the call records necessary for direct billing for the termination of calls.<sup>13</sup> The Coalition responded on April 3, 2003 by filing the *Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* ("*Petition for Emergency Relief*"). On April 10, 2003, the Hearing Officer issued a notice scheduling a status conference and directing that responses to the *Petition for Emergency Relief* be filed by April 14, 2003. After having received an extension, BellSouth filed a response and counterclaim on April 15, 2003.

On April 25, 2003, the Coalition and BellSouth filed the *Joint Agreed Motion for 60-Day Conditional Stay*.<sup>14</sup> In the motion, BellSouth and the Coalition agreed to engage in good faith negotiations to establish contractual terms governing payments for the termination of CMRS traffic.<sup>14</sup> The conditions of the stay provided that BellSouth would continue to compensate the Coalition for the termination of CMRS-originated traffic for sixty (60) days after which

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<sup>11</sup> See *Order Granting Request to Hold Reconsideration in Abeyance* (Sept. 4, 2002) (holding consideration of the motion in abeyance for sixty days); *Order Continuing Abeyance* (Dec. 6, 2003) (extending the abeyance period until Jan. 3, 2003), *Order Continuing Abeyance* (Jan. 8, 2003) (extending the abeyance period until Mar. 4, 2003), *Order Continuing Abeyance* (Mar. 5, 2003) (extending the abeyance period until May 5, 2003).

<sup>12</sup> See Letter to Director Ron Jones from Guy Hicks, General Counsel BellSouth, dated April 2, 2003, 1 (Apr. 2, 2003).

<sup>13</sup> See *id.* at 1. The Hearing Officer understands from the April 2, 2003 letter that BellSouth's decision to cease compensating the Coalition does not apply to CMRS traffic that is originated by a CMRS carrier that does not have a meet-point billing agreement with BellSouth.

<sup>14</sup> See *Joint Agreed Motion for 60-Day Conditional Stay*, 1 (Apr. 25, 2003).

BellSouth will pay the Coalition 3.0 cents per minute for the traffic for the next thirty (30) days. At the end of the ninety (90) day period, the parties agreed that BellSouth could terminate payments but that the Coalition retains the right to oppose such action.<sup>15</sup> On May 2, 2003, BellSouth and the Coalition filed a letter asking the Hearing Officer to continue to hold the *Motion for Reconsideration* in abeyance for an additional sixty (60) days.

On May 5, 2003, the Hearing Officer issued the *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions*. In the order, the Hearing Officer held the *Petition for Emergency Relief* and *Motion for Reconsideration* in abeyance until July 4, 2003. The order further directed the Coalition and BellSouth to send correspondence to CMRS providers that have effective meet-point billing agreements with BellSouth inviting them to participate in negotiations and to file reports on the status of their negotiations with the CMRS providers at regularly scheduled intervals.<sup>16</sup>

After receiving updates from the parties evidencing their continued negotiations, the Hearing Officer entered orders on July 2, 2003, August 4, 2003, September 2, 2003, and November 3, 2003 extending the stay and abeyance. As per the November 3, 2003 order, the stay and abeyance period expired on January 5, 2004 and the parties were to file an update on their negotiations by January 2, 2004.

Having received no update by February 2, 2004, the Hearing Officer issued the *Notice of Telephonic Status Conference* scheduling a conference for February 17, 2004. During the telephonic status conference, the Hearing Officer heard comments from all represented parties and determined that the most efficient manner in which to proceed is to have the parties file briefs addressing the outstanding pleadings and issues. With the parties' agreement, the Hearing

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<sup>15</sup> See *id.* at 1

<sup>16</sup> See *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions*, 8-9 (May 5, 2003).

Officer directed the parties to file initial briefs on February 27, 2004 and reply briefs on March 8, 2004.<sup>17</sup>

## **II. OUTSTANDING ISSUES**

The only issues discussed by the parties in their briefs are those presented in the *Motion for Reconsideration*, *Petition for Emergency Relief*, and BellSouth's counterclaim. Of these issues the only issues that have been resolved are those involving BellSouth's counterclaim, which BellSouth agrees are moot. As for the *Motion for Reconsideration*, the panel decided to treat the motion as a petition for appeal filed under Tenn. Code Ann. § 4-5-315.<sup>18</sup> Therefore, the issues raised in the *Motion for Reconsideration* are before the panel, not the Hearing Officer. This leaves only the *Petition for Emergency Relief* to be decided by the Hearing Officer. In the *Petition for Emergency Relief*, the Coalition requests the issuance of an order requiring BellSouth to continue compensating the Coalition for the termination of CMRS traffic pursuant to the Interconnection Arrangements.<sup>19</sup>

## **III. POSITIONS OF THE PARTIES**

### **A. BELL SOUTH**

BellSouth asserts that it is not obligated to compensate the Coalition for CMRS traffic under the 1996 Telecommunications Act or any contracts, including the Toll Settlement Agreements, which form the basis of the Interconnection Arrangements.<sup>20</sup> In support of its contract defense, BellSouth references the plain language of the Toll Settlement Agreements and the facts that the Toll Settlement Agreements predate CMRS traffic, were never amended in

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<sup>17</sup> See Order on February 17, 2004 Telephonic Status Conference, 3 (Feb. 24, 2004).

<sup>18</sup> See Order Accepting Petition for Appeal and Appointing a Hearing Officer, 3 (Sept. 17, 2002).

<sup>19</sup> See Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition, 1, 4 (Apr. 3, 2004).

<sup>20</sup> See Brief of BellSouth Telecommunications, Inc. Regarding Status of Outstanding Motions and Procedural Proposal, 2, 5 (Feb. 27, 2004), See BellSouth's Reply in Opposition to the Briefs Filed on Behalf of the Rural Coalition of Small LECs and Cooperatives and the Consumer Advocate Division, 1-2 (Mar. 8, 2004).

Tennessee to include CMRS traffic, and apply only to toll traffic.<sup>21</sup> Relying on the change in billing technology, BellSouth explains that it can now provide the Coalition with the information necessary for the Coalition to bill the CMRS providers once a CMRS provider converts to meet-point billing.<sup>22</sup> BellSouth contends that its payments in the past to the Coalition for CMRS transit traffic were merely an accommodation.<sup>23</sup> Further, BellSouth argues that this issue does not present an emergency because: (1) the CMRS providers are willing to compensate the Coalition and proceed with the arbitration;<sup>24</sup> (2) BellSouth is willing to pay interim compensation of 2.5 cents per minute until May 2004; and (3) the Coalition chose to continue negotiations in the absence of compensation.<sup>25</sup>

BellSouth alleges that circumstances have changed since the issuance of the *December 2000 Order*. BellSouth contends that the Coalition is seeking a rate of 3.0 cents per minute that is “out of line with the norm.” In support of its position, BellSouth cites existing agreements containing rates between .80 and 1.5 cents per minute.<sup>26</sup>

BellSouth argues that there is no legal support for the contention that BellSouth’s previous payments for CMRS traffic created a future legal obligation. Citing Tenn. Code Ann. § 29-2-101, BellSouth contends that “an enforceable obligation to perform a task that cannot be

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<sup>21</sup> See *BellSouth’s Reply in Opposition to the Briefs Filed on Behalf of the Rural Coalition of Small LECs and Cooperatives and the Consumer Advocate Division*, 1 (Mar. 8, 2004)

<sup>22</sup> See *Brief of BellSouth Telecommunications, Inc Regarding Status of Outstanding Motions and Procedural Proposal*, 2 (Feb. 27, 2004)

<sup>23</sup> See *id* at 3

<sup>24</sup> Cellco Partnership d/b/a Verizon Wireless, BellSouth Mobility LLC, BellSouth Personal Communications, LLC, and Chattanooga MSA Limited Partnership collectively d/b/a Cingular Wireless; AT&T Wireless PCS, LLC d/b/a AT&T Wireless, T-Mobile USA, Inc.; and Sprint Spectrum L.P. d/b/a Sprint PCS each filed petitions for arbitration. The Authority consolidated all of the petitions under Docket No. 03-00585. See Transcript of Proceedings, December 8, 2003, 4-5 (Authority Conference)

<sup>25</sup> *Brief of BellSouth Telecommunications, Inc Regarding Status of Outstanding Motions and Procedural Proposal*, 6 (Feb. 27, 2004).

<sup>26</sup> *Id* at 4.



completed in less than one year can only be created by a written agreement” and there is no written agreement that references CMRS traffic.<sup>27</sup>

## **B. THE COALITION**

The Coalition asserts that it is not aware of any changes in law that are relevant to the resolution of its *Petition for Emergency Relief*.<sup>28</sup> The Coalition further asserts that there are no disputed facts and summarizes the facts in its brief.<sup>29</sup> The Coalition recognizes there are benefits to altering the Interconnection Arrangements between its members and BellSouth, but urges that such changes must be made with consideration of universal service and with the Authority’s approval.<sup>30</sup> Citing the *December 2000 Order* and the Authority’s affirmation of that order, the Coalition argues that the Authority has held that the Interconnection Arrangements between its members and BellSouth are within the Authority’s jurisdiction and that the arrangements will remain in effect absent Authority action.<sup>31</sup>

The Coalition asserts that BellSouth previously compensated Coalition members for CMRS traffic in accordance with the terms and conditions of the Interconnection Arrangements. Those terms and conditions, according to the Coalition, are the only applicable provisions between the Coalition members and BellSouth.<sup>32</sup> The Coalition contends that it offered to continue the 3.0 cent interim arrangement until December 31, 2004 or until the establishment of new terms, but BellSouth refused.<sup>33</sup> The Coalition asserts five additional arguments. First, addressing BellSouth’s position that the subject CMRS traffic is local, the Coalition contends that the Federal Communications Commission’s 2001 *Order on Remand* contradicts that position

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<sup>27</sup> *Id.* at 5.

<sup>28</sup> *See Brief of the Rural Independent Coalition*, 3 (Feb. 27, 2004).

<sup>29</sup> *See id.* at 4.

<sup>30</sup> *See id.* at 5.

<sup>31</sup> *See id.* at 6-7.

<sup>32</sup> *See id.* at 11.

<sup>33</sup> *See id.* at 13-14.

and supports the position that access charges may apply to the termination of CMRS traffic.<sup>34</sup> Second, the Coalition asserts that BellSouth's argument that it has no legal obligation as the transit provider to pay compensation is without merit. According to the Coalition, BellSouth voluntarily chose to transit the CMRS traffic and compensate the Coalition members for that traffic pursuant to the Interconnection Arrangements through May 31, 2003 and that choice did not give rise to a unilateral right to cease providing compensation.<sup>35</sup> Third, the Coalition argues that there exists no authority to support BellSouth and the CMRS Carriers' position that "they can bilaterally enter into so-called 'Meet-Point-Billing' arrangements and thereby affect the rights of the [Coalition]."<sup>36</sup> Fourth, the Coalition contends that BellSouth's and the CMRS Carriers' settlement offers are neither equitable nor sufficient. BellSouth's proposal, the Coalition notes, would only cover traffic delivered through March 31, 2004.<sup>37</sup> As to the CMRS Carriers' proposal, the Coalition comments that, while the members wish to be compensated for the terminated traffic, they choose to obtain compensation from BellSouth under the terms of the Interconnection Arrangements.<sup>38</sup> Fifth, the Coalition argues that there is no need to establish a "Stake Date"<sup>39</sup> as argued by the CMRS Carriers because the applicable Stake Date is the date on which the Authority modifies, replaces or terminates the Interconnection Arrangements.<sup>40</sup>

### C. THE CMRS CARRIERS

The CMRS Carriers urge the Authority to reject the Coalition's *Petition for Emergency Relief* and allow the issue regarding compensation for CMRS traffic terminated to a Coalition

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<sup>34</sup> See *Reply Brief of the Rural Independent Coalition*, 6 (Mar. 8, 2004) (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 F.C.C.R. 9151, 9167, para. 34 (2001) (Order on Remand and Report and Order))

<sup>35</sup> See *id.* at 9-10.

<sup>36</sup> *Id.* at 12

<sup>37</sup> See *id.* at 17

<sup>38</sup> See *id.* at 18

<sup>39</sup> See *infra* part III C, p. 11.

<sup>40</sup> See *id.* at 23.

end user to be determined in the arbitration.<sup>41</sup> In the joint comments, the CMRS Carriers argue that the Authority should conclude that the CMRS originated, meet-point billed traffic is not subject to the Toll Settlement Agreements and that BellSouth is not required to make any further payments for such traffic as of a “Stake Date.”<sup>42</sup> The CMRS Carriers propose a Stake Date of May 5, 2003, the issuance date of the *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions*; July 30, 2003, the CMRS Carrier interim compensation offer date; or a subsequent date set by the Authority.<sup>43</sup> The CMRS Carriers assert that three-way agreements are not necessary because (1) the 1996 Telecommunications Act applies to bilateral agreements, (2) the Authority has never permitted a three-way arbitration over the objection of a party, and (3) agreements regarding the indirect exchange of traffic can be created without the participation of the intermediate tandem party.<sup>44</sup>

#### **D. THE CONSUMER ADVOCATE**

The Consumer Advocate states the Authority should grant the *Petition for Emergency Relief*. The Consumer Advocate asserts that the Authority should ensure that there is not a “disproportionate burden on the rural providers and their ability to provide telecommunications service is not adversely effected.”<sup>45</sup> The Consumer Advocate further asserts that “BellSouth should not be allowed at this time to sever itself from long standing obligations.”<sup>46</sup>

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<sup>41</sup> See CMRS Carriers' Joint Comments Relating to February 17, 2004 Status Conference, 2 & 4 (Feb. 27, 2004)

<sup>42</sup> *Id.* at 5.

<sup>43</sup> See *id.*

<sup>44</sup> See *id.* at 6-7

<sup>45</sup> Brief of the Consumer Advocate & Protection Division of the Office of the Attorney General in Response to the Order on February 17, 2004 Telephonic Status Conference, 1 (Feb. 27, 2004)

<sup>46</sup> *Id.* at 2

#### IV. FINDINGS AND CONCLUSIONS

##### A. BELL SOUTH'S CONTINUING OBLIGATIONS

The Hearing Officer cannot agree with BellSouth's contention that it is not required to compensate Coalition members for CMRS-originated traffic because the traffic does not fall within the explicit language of the Toll Settlement Agreements. This contention fails to recognize the breadth of the Hearing Officer's *December 2000 Order*. In the *December 2000 Order*, the Hearing Officer recognized that BellSouth terminated the Toll Settlement Agreements as of December 31, 2000. Nevertheless, the Hearing Officer found that BellSouth had an existing regulatory obligation to maintain Interconnection Arrangements with the Coalition.<sup>47</sup> BellSouth sought appeal of this decision and urged the Authority to reject the Hearing Officer's Initial Order. After review of BellSouth's Petition, the Directors unanimously denied BellSouth's Petition and affirmed the Hearing Officer's Initial Order.<sup>48</sup>

BellSouth now claims that CMRS traffic, at least to the extent that the traffic is originated by a CMRS provider with a meet-point billing agreement with BellSouth, was never subject to the Toll Settlement Agreements and, therefore, is not a part of the Interconnection Arrangements.<sup>49</sup> This claim is contrary to the *December 2000 Order*. Nowhere in the *December 2000 Order* did the Hearing Officer determine that the Interconnection Arrangements are limited to the explicit language of the Toll Settlement Agreements. To the contrary, the Hearing Officer specifically recognized obligations that exist pursuant to regulatory edict that may be beyond the

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<sup>47</sup> Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction Over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc. and Independent Local Exchange Carriers, 12 (Dec. 29, 2000).

<sup>48</sup> Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer, (May 9, 2001).

<sup>49</sup> See *infra* text accompanying note 13

obligations the parties agreed to absent regulatory influence.<sup>50</sup> Later in the order, the Hearing Officer refers to both escaping existing interconnection arrangements and dismantling intraLATA toll arrangements.<sup>51</sup> This language recognizes the existence of interconnection obligations outside the written terms of the Toll Settlement Agreements that must be maintained after termination of the written agreements. CMRS-originated traffic presents such a situation. Therefore, the Interconnection Arrangements contemplated by the *December 2000 Order* require BellSouth to provide compensation to the Coalition members for all CMRS-originated traffic terminated to the Coalition's end users in the same manner that BellSouth provided the compensation prior to the issuance of the *December 2000 Order* until that obligation is otherwise modified or terminated by the Authority.

BellSouth also argues that it is not required to pay for the CMRS traffic that is the subject of this dispute because according to the Federal Communication Commission the traffic is local. The resolution of the *Petition for Emergency Relief* does not require a determination of whether the traffic is subject to a particular compensation mechanism under federal law. The Interconnection Arrangements, which as concluded above include CMRS traffic, are a state law obligation. This obligation predates the 1996 Telecommunications Act. Moreover, BellSouth has not alleged that the imposition of this state obligation is inconsistent with or substantially prevents the implementation of Section 251 of the 1996 Telecommunications Act.<sup>52</sup>

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<sup>50</sup> *Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction Over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc and Independent Local Exchange Carriers*, 10 (Dec 29, 2000).

<sup>51</sup> *Id* at 12

<sup>52</sup> See 47 U.S.C § 251(d)(3) (preserving state interconnection obligations).

## **B. Changes in Circumstances Since the *December 2000 Order***

Although the *December 2000 Order* did not disturb the regulatory obligations imposed on BellSouth, it contemplated that efforts to develop an alternative compensation mechanism would continue and that the obligations could be modified or terminated in the future.<sup>53</sup> Thus, the conclusions in the above section lead to the next determination: whether the obligations created by the Interconnection Arrangements should be modified or terminated.

It is the opinion of the Hearing Officer that circumstances have changed such that the time has come to modify the Interconnection Arrangements with respect to CMRS traffic originated by a CMRS provider with a meet-point billing agreement with BellSouth and terminated to a Coalition end user. Although there is no specific data in the record of this docket, there can be no dispute that the use of CMRS services and the number of CMRS providers have increased over the years. Additionally, since December of 2000 some CMRS providers<sup>54</sup> have opted to use a billing procedure that results in the generation of call records that can then be used by the terminating carrier to generate billing invoices. Of particular importance is the fact that CMRS Carriers have now come to the Authority and have identified themselves as the originating providers responsible for compensating the carriers on whose networks calls terminate.<sup>55</sup> This identification allows the Authority to realize the desirable regulatory goal, especially in a developing competitive environment, of recovering costs from the cost-causer. What is particularly compelling as evidence of further change is the fact that certain members of

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<sup>53</sup> *Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction Over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc. and Independent Local Exchange Carriers*, 12 (Dec. 29, 2000).

<sup>54</sup> According to BellSouth's April 2, 2003 letter, BellSouth only has meet-point billing agreements "with most of the larger CMRS providers." Letter to Director Ron Jones from Guy Hicks, General Counsel BellSouth, dated April 2, 2003, 2 (Apr. 2, 2003).

<sup>55</sup> See *In Re Petition for Arbitration of Cellco Partnership D/B/A Verizon Wireless*, Docket No. 03-00585, Joint Issues Matrix, 5 (March 4, 2004).

the Coalition and CMRS providers have executed agreements that contain rates of between .80 and 1.5 cents for the termination of local traffic.<sup>56</sup>

An additional change in circumstances since the *December 2000 Order* is the fact that, at least with regard to the traffic that is the subject of this dispute, there seems to be little hope for a negotiated resolution. The fact that the parties have reached an impasse is evidenced by the statements of the parties, the filing of the petitions for arbitration by the CMRS Carriers, and the numerous he-said-she-said type accusations hurled between the parties in the briefs. Given this reality, any attempt at reconciliation other than requiring continued compensation pursuant to the Interconnection Arrangements or mandating an alternative compensation mechanism is futile and will only serve to delay the progress of this docket.

Recognizing the evolution of both “technology and the competitive marketplace,” the Coalition too suggests that it is “mutually advantageous to consider changes in rate design and other interconnection terms and conditions.”<sup>57</sup> Nevertheless, the Coalition argues that any changes be made with recognition of the impact on universal service.<sup>58</sup>

The Hearing Officer appreciates the Coalition’s argument and agrees that any effects of the modification or termination of the Interconnection Arrangements should be considered in this docket. The Hearing Officer, however, cannot conclude that the modification or termination of the Interconnection Arrangements is prohibited merely because there will be an impact on the Coalition’s revenues. Reaching such a conclusion would ignore the fact that the Interconnection Arrangements were developed prior to the development of competition in the telecommunications marketplace and the deployment of a variety of new telecommunications

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<sup>56</sup> See *BellSouth’s Reply in Opposition to the Briefs Filed on Behalf of the Rural Coalition of Small LECs and Cooperatives and the Consumer Advocate Division*, 4 (Mar. 8, 2004)

<sup>57</sup> *Brief of the Rural Independent Coalition*, 5 (Feb. 27, 2004)

<sup>58</sup> See *id*

services. Additionally, the Coalition has provided no data or even asserted that a reduction in compensation for the subject traffic would impact the Coalition's revenues to such an extent as to threaten the objectives of universal service. The Coalition's desire to seek asylum from this change under the umbrella of universal service requires, at a minimum, a specifically targeted showing that supports the contention that universal service would not be maintained, and that rates charged to residential customers for essential telecommunications services would not remain affordable.

In light of the changes in circumstances since the issuance of the *December 2000 Order*, the Hearing Officer concludes that it is appropriate to modify the Interconnection Arrangements with regard to CMRS traffic originated by a CMRS provider with a meet-point billing arrangement with BellSouth and terminated to a Coalition end user.

### **C. COMPENSATION MECHANISM**

The parties have presented several options for future compensation. The Coalition has suggested the payment of 3.0 cents per minute through December 31, 2004 or until new terms and conditions are reached. BellSouth has suggested the payment of 2.5 cents per minute until May 2004. The CMRS Carriers do not offer a specific dollar amount, but instead suggest the Hearing Officer set a "Stake Date" after which the CMRS Carriers and the Coalition members can only seek compensation from one another.

The Hearing Officer concludes that BellSouth should compensate the Coalition members at a rate of 3.0 cents per minute until the earliest of the following dates: (1) a date established by the CMRS Carriers and the Coalition members; (2) 30 days following the panel's deliberations in Docket No. 03-00585; or (3) December 31, 2004. This conclusion recognizes the Coalition is



providing a service without receiving compensation, this dispute is between BellSouth and the Coalition, and the parties previously agreed to a reasonable compromise of 3.0 cent per minute.

Who is responsible under the Telecommunications Act of 1996 for paying termination to the Coalition for the CMRS traffic that is the subject of this dispute ultimately will be decided in Docket No. 03-00585.<sup>59</sup> In the meantime, the Coalition should not be left without compensation. It cannot be denied that the Coalition is providing a service for which it is entitled to compensation.

This dispute arose out of the Interconnection Arrangements between BellSouth and the Coalition. Therefore, the Hearing Officer's resolution involves only those parties. This decision does not affect the ability of BellSouth and the CMRS Carriers to enter into an agreement under which the CMRS Carriers will reimburse BellSouth for the compensation it pays to the Coalition. Additionally, in the event that the CMRS Carriers and the Coalition reach an interim agreement in Docket No. 03-00585, BellSouth may file a motion requesting relief from this order.

Based on the varied assertions of the parties, an interim rate of 3.0 cents per minute appears to represent a reasonable compromise pending ultimate resolution of this issue. The parties previously agreed that BellSouth would pay the Coalition 3.0 cents per minute for traffic terminated during May 2003. The Coalition represents that 3.0 cents per minute is significantly less than the compensation it would receive under the Interconnection Arrangements.<sup>60</sup> The Hearing Officer does note, however, that BellSouth argues that based on current agreements

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<sup>59</sup> See *In Re Petition for Arbitration of Cellco Partnership D/B/A Verizon Wireless*, Docket No. 03-00585, *Joint Issues Matrix*, 5 (Mar. 4, 2004) (listing Issue 3 as "Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO").

<sup>60</sup> See *Brief of the Rural Independent Coalition*, 12 (Feb. 27, 2004).

between CMRS providers and Coalition members 3.0 cents per minute is likely to exceed the rate established in Docket No. 03-00585.<sup>61</sup>

**IT IS THEREFORE ORDERED THAT:**

BellSouth Telecommunications, Inc. shall pay to the Rural Independent Coalition compensation in the amount of 3.0 cents per minute for all CMRS traffic terminated after May 31, 2003 to an end user served by a member of the Rural Independent Coalition when that CMRS traffic is originated by a CMRS provider that has entered into a meet-point billing arrangement with BellSouth Telecommunications, Inc. Unless otherwise ordered, this obligation shall continue until the earliest of the following dates: (1) a date established by the CMRS Carriers and the Coalition members; (2) 30 days following the panel's deliberations in Docket No. 03-00585; or (3) December 31, 2004. BellSouth Telecommunications, Inc. shall continue to make payments for all other traffic, including CMRS traffic terminated to a Rural Independent Coalition end user when that CMRS traffic is originated by a CMRS provider that has not entered into a meet-point billing arrangement with BellSouth Telecommunications, Inc., in accordance with previous orders in this docket.

  
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Ron Jones, Director  
As Hearing Officer

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<sup>61</sup> See *BellSouth's Reply in Opposition to the Briefs Filed on Behalf of the Rural Coalition of Small LECs and Cooperatives and the Consumer Advocate Division*, 3 n.2 (March 8, 2004)